

MUTUAL BENEFIT ASSOCIATION OF HAWAII

MEMORANDUM

OCTOBER 15, 2002

TO: Davis K. Yogi
Rules Committee
Hawaii Employer-Union Health Benefits Trust Fund

FROM: Melvin Higa, Senior Vice President

SUBJECT: Acknowledgement & Response to Your Letters Dated September 30, 2002
Re: Proposed Rules of the Hawaii Employer-Union Health Benefits Trust
Fund

Dear Mr. Yogi:

I acknowledge receipt of your two letters dated September 30, 2002. Your letters are in response to two of my communications dated September 17, 2002. I received your two letters on October 3, 2002.

Much of your response speaks to the Rules Committee having conducted extended consultation and extensive review to assure rules are consistent with law. Such conveyance rings hollow, because facts evidence the shortcomings that produced the unpleasing results stated in my communications. Therefore, I will address that proposition first. Thereafter, I will provide specific and substantive information to prove that these shortcomings in fact resulted in the proposed rules being inconsistent with law.

The fact that the Rules Committee and Board deliberated all comments and input from the public employers, unions and others and gave consideration to incorporating them in the proposed rules cannot be used by the Rules Committee and Board as the yardstick to justify and make believe that the proposed rules conform with law. The reason for my making this statement is that comments and input were largely in response to a comparative chart entitled "Comparison of Rules Committee Recommended Rules with Current Health Fund Administrative Rules." That comparative chart format document was:

- (a) Materially incomplete and therefore could not have served to generate responses that would have been gotten if the comparisons shown and presented were materially complete;

- (b) Portions of the chart where comparison were complete and accurate and of material significance, were not clearly incorporated in the subsequent proposed text form rules version being recommended for adoption; and
- (c) Considering your personal level of expertise and knowledge in this particular human resources area and that of Deputy Attorney General Aburano's qualification in interpreting Chapter 87A, HRS, it is not conceivable that the proposed rules being inconsistent with law is an oversight or simply in error.

The comparative chart used for consultation and public input omits many provisions of the PEHF Administrative Rules to which comparisons are made to HEUHBTF Rules. Of particular significance as pertains to my prior communications are those PEHF Administrative Rules concerning employee-beneficiaries (those employees who are eligible for health and life benefits). If the Rules Committee and Board placed the full proposed changes in the comparison chart of proposed HEUHBTF Rules there certainly would be consistency of the proposed rules with law. However, the proposed rules in text form do not properly incorporate that presented in the comparative chart form and result in the proposed rules in text form being inconsistent and not in conformance with law.

Your response states that my letter does not state how the proposed rules are inconsistent with Chapter 87A, HRS. Note that my communications ask that the Committee or any member of the Committee contact me should there be any questions. Despite this request, no one contacted me. Neither did anyone invite or request an explanation. Furthermore, while your statement that I am incorrect about the invalidity of the proposed rules because so many others have not raised the kinds/types of concerns that I have, does not stand-up to scrutiny, I provide the below layperson analysis examples, without an express invitation to do so, to show how the proposed rules are inconsistent with Chapter 87A, HRS.

First example. Proposed Rules Relating to Eligibility for Health Benefits & Life Insurance Benefits as Apply to Part-Time, Temporary, and Seasonal or Casual Employees are Contradictory to Chapter 87A, HRS.

The EUTF Board is required/mandated (shall) to establish the health benefits plan or plans for its employee-beneficiaries, and is permitted (may) to contract for health benefits plans or provide health benefits through a noninsured schedule of benefits (87A-16). The board decided to establish the health benefits plan or plans by contracting for such plans. The board issued RFPs soliciting contract proposals for the establishing of mandated health benefits plans via contract.

The health benefits plan or plans required to be established must provide health benefit plans to employee-beneficiaries and dependent-beneficiaries, as defined in Chapter 87A, HRS (87A-31(a)).

The board is required/mandated (shall) establish eligibility criteria to determine who can qualify as an employee-beneficiary, dependent-beneficiary, or qualified beneficiary. The Board's power and authority in doing so, however, is limited. The eligibility criteria developed by the Board is required to be consistent with the provisions of Chapter 87A, HRS. (87A-21). It should and is noted that such eligibility criteria can be established in various ways. For example, by and in rules, and/or by incorporation within RFPs issued that result in award of legal and binding contractual terms and conditions.

The above-mentioned mandate to establish health benefits plans for employee-beneficiaries requires the defining and applying of a definition of "employee-beneficiaries." That definition is provided under section 87A-1, wherein "Employee-beneficiary" is defined to mean, among others, an employee; and, in that statute section, "Employee" is defined to mean and include, among others, persons employed for three or more months and whose employment is less than one-half of a full-time equivalent position. This later reading of the definition is made crystal clear by the following:

- The statutory definition of "Employee" provides for not only those that are included in the term "Employee", but also those who are excluded from that term "Employee", and thus not eligible to receive benefits provided by the Fund. Specified, among others, as being excluded from the definition of the term "Employee" are: "A part-time, temporary, and seasonal or causal employee" (87A-1, "Employee" (2) (C)). It is, crystal clear that the definition section of Chapter 87A defines those "part-time, temporary, and seasonal or causal employee(s)" who are excluded from the definition of the term "Employee" as being a person who is employed for less than three months & in a less than one-half of a full-time equivalent position. Therefore, all other persons employed by the State or County governments are "Employees", as that term is defined and used in Chapter 87A. Thus, a person employed for three or more months & in a less than one-half of a full-time equivalent position is an "Employee" who is deemed to be an "Employee-beneficiary" eligible for health and life benefits.
- While clarity is abundantly provided within the foregoing, the above mentioned becomes exceedingly clearer under section 87A-19. Therein, the board is permitted/allowed (may) to offer medical, hospital, or surgical benefits plans to part-time, temporary, and seasonal employees at no cost to the employers. Without any doubt whatsoever, there is a distinction herein between those individuals whose employment is less than one-half of a full-time equivalent position and employed for three or more months versus individuals whose employment is less than three months and less than one-half or more of a full-time equivalent position. The benefits that the board may offer to these second category set of workers is limited to medical, hospital, or surgical benefits and provided, further, that there be no cost to the employers. Whereas, in comparison, benefits for those eligible as "employee-beneficiaries" can include additional benefits such as vision, dental and prescription drugs, and with cost to employers as determined under Chapter 89C, HRS.

The second example is on group life insurance benefits under Chapter 87A, HRS follows.

The board may provide benefits under a group life insurance program to employees (87A-17).
Interpretive assertion:

- Where employer contribution for group life insurance benefits is made available (by statute for retirees; by collective bargaining for actives; and for employees not covered by collective bargaining by employers under 89C) the board may (but is not required to) provide group life insurance benefits for such employees. However, once the board decides to provide group life insurance benefits, it must do so in a way that complies with 87A. Where employer contributions do not exist for all or any category/group of employees, the board may not (shall not) provide group life insurance benefits for all or any such category/group of employees, as the case may be.
- Further Interpretative assertion is, where employer contributions are made the fund is required to provide group life insurance benefits.

The board has the power to establish health benefits plan and long-term care benefits plan rates that include administrative and other expenses necessary to effectuate the purposes of the fund (87A-24(8)) Interpretive assertion:

- Because group life insurance benefits is not included in 87A-24(8) and nowhere in 87A does it provide that the board has the authority to establish a group life insurance benefits plan rate that includes administrative and other expenses necessary to carry out the group life insurance benefits plan, the power to establish a group life insurance benefits plan rate that includes administrative and other expenses necessary to effect the purposes of the group life insurance benefits plan portion of the fund is prohibited.

The fund may be used to provide group life insurance benefits to employees to the extent that contributions are provided for group life insurance benefits in sections 87A-32(b) and 87A-37, (and to reference 87A-31(c) – trust fund purpose), and 89C.

The lawful provisions presented above are clear on its face. There is no ambiguity. Part-time, temporary, and seasonal or casual persons employed for three months or more and whose employment is less than one-half of a full-time equivalent position are eligible for health and life benefits.

Furthermore, the above is consistent with Hawaii Public Employees Health Fund's providing of group life insurance benefits without assessing the beneficiaries for any of the costs of administering or otherwise providing these group life insurance benefits, and the costs for group life insurance benefits was not and never an issue in regards to Act 88, SLH 2001 and its intended reform allowing for administrative costs and expense being charged to premium costs –

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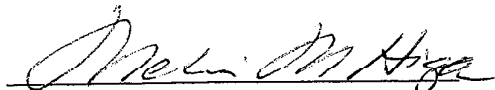
cost shifting from employers to employees. That cost shifting is clearly applicable and limited to the escalating cost for health and long-term care benefits, and not group life insurance benefits.

The Board contends otherwise, for the Board approved and issued RFPs 03-001 that contain provisions that make those part-time, temporary, and seasonal or casual persons who are eligible under the law ineligible for health and life benefits that they must be given as employees, and illegally shifts administrative cost and other expenses to employee-beneficiaries for group life benefits.

The interpretative assertions presented are simple, unadulterated reading of the plain language contained in Chapter 87A, as applies to this subject matter.

How is it, one may and should ask, that ten (10) educated EUTF Trustees, the professionals the EUTF Board retains under contracts, the State of Hawaii Attorney General, and the Department of Budget and Finance to which the EUTF is administratively attached individually, and much more, not see or agree to this plain reading of the law??? The only and sole acceptable reason is that this layperson-author is incompetent. Should that be the case and findings, I accept that. Should that not be the case, the findings and conclusion is and must be that there is no acceptable and justified reason. Which means, conduct of the EUTF Committee and Board is less than prudent and less than that required for Trustees performing in capacity as fiduciaries of the Fund.

As to your reference to "full-time students", my comments thereto are found in my communications dated September 25, 2002. Therein, my comments that apply concern disparate/discriminatory employment practices. There are other provisions that should be reviewed to assure that proposed rules do not result in disparate/discriminatory employment practices, if not already reviewed for such. As to the "clean-up" of these provisions and the Proposed Rules in general, a legal review should be required before the Committee recommends approval and adoption to Board, which was not the case of RFP 03-001, resulting in it being a mess.


Melvin M. Higa